

Proposed Changes to Utah Underground Storage Tank Rules

Draft- for stakeholder comments. 10/6/03. Explanations of the proposed changes are italicized.

General- Several changes are made throughout the rules to improve punctuation and grammar, correct law, rule, and regulation citations, and be more correct and consistent in rule text formatting. Other changes are made to clarify the wording. The meaning remains the same, but the text is revised to be easier to read and understand.

R311. Environmental Quality, Environmental Response and Remediation.

R311-212. Administration of the Petroleum Storage Tank Loan Fund.

R311-212-1. Definitions.

Definitions are found in Section R311-200.

R311-212-2. Loan Application Submittal.

(a) Application for a loan shall be made on forms incorporated in Section R311-212-10, in accordance with Subsection 19-6-405.3(7). Loan eligibility applications shall be accepted during application periods designated by the Executive Secretary. To receive a loan the applicant shall complete the following steps:

(1) Submit and receive approval from the Executive Secretary of a loan eligibility application; and

(2) Submit and receive approval from the Executive Secretary of a financial application.

(b) As long as loan funds are available at least one application period shall be designated each fiscal year. Additional funds available through repayment of existing loans shall be loaned according to priorities from the most recent application period.

(c) Valid loan eligibility applications received during an application period shall be prioritized before review according to R311-212-4. Applications must be received by the Executive Secretary by 5:00 p.m. on the last day of a given application period.

(d) Loan eligibility applications received outside the application period shall be invalid.

R311-212-3. Loan Eligibility Application Review.

(a) The Executive Secretary shall review the eligibility application to determine if the applicant meets the criteria stated in Subsections 19-6-405.3(3), 19-6-405.3(4), 19-6-405.3(5) and 19-6-405.3(6).

(b) To meet the eligibility requirements of 19-6-405.3(4) the applicant must, for all facilities for which the applicant requests a loan, demonstrate current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking underground storage tanks, or must be able to achieve compliance with the loan proceeds.

(c) To meet the eligibility requirements of 19-6-405.3(4) the applicant must meet the following for all facilities owned or operated by the applicant for which the applicant does not request a loan:

(1) The applicant has demonstrated current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking underground storage tanks;

(2) All regulated underground petroleum storage tanks owned by the applicant have met the requirements of Section 19-6-412(2) and have a current certificate of compliance;

(3) The applicant has paid all underground storage tank registration fees, interest and penalties which have been assessed; and

(4) The applicant has paid all applicable petroleum storage tank fees, interest and penalties which have been assessed.

(d) To meet the requirements of Section 19-6-405.3(3), the loan request must be for the purpose of:

(1) Upgrading or replacing existing petroleum USTs to meet requirements of 40 CFR 280.21;

(2) Installing a leak detection monitoring system; or

(3) Permanently closing USTs. If an applicant requests a loan for closing USTs which will be replaced by above-ground storage tanks, the loan, if approved, will be only for closing the USTs. The security pledged by the applicant for a loan to replace USTs with above-ground storage tanks shall be subject to the limitations in R311-212-6.

(e) The Executive Secretary shall notify the applicant in writing of the status of the loan eligibility application. If the loan eligibility application is approved, the applicant may submit a financial application.

R311-212-4. Prioritization of Loan Eligibility Applications.

(a) When determined by the Executive Secretary to be necessary, all applications received during a designated application period shall be prioritized by total points assigned. Ten points shall be given for each item that applies to the applicant or the facility for which the loan is requested:

(1) The applicant has less than \$1,000,000 annual gross income and fewer than five full-time employee equivalents and is not owned or operated by any person not meeting the income and employee criteria.

(2) The applicant's income is derived solely from operations at UST facilities.

(3) The applicant owns or operates no more than two facilities.

(4) The facility is located in a U.S. Census Bureau population unit containing fewer than 5,000 people.

(5) There are no more than three operating retail outlets selling motor fuel within 15 miles road distance in all directions.

(6) Loan proceeds will be used solely for replacing or upgrading USTs.

(7) All USTs at the facility are greater than 15 years old.

(b) One point shall be given for each road mile of distance from the facility to the nearest operating retail outlet selling motor fuel, to a maximum of 30 points.

(c) Applications which receive the same number of points shall be sub-prioritized according to the date postmarked or the date delivered to the Executive Secretary by any other method.

(d) Applications shall remain in priority order regardless of availability of funds until a new application period is declared. When a new application period begins, priority order of eligibility applications which have not been reviewed terminates. An applicant whose eligibility application has not been reviewed or an applicant whose eligibility application has not been approved because the applicant has not satisfied the requirements of Subsections 19-6-405.3(3) through (6), loses eligibility to apply for a loan and must submit a new eligibility application in the subsequent period to be considered for a loan in that period.

R311-212-5. Financial Application Review.

(a) The applicant shall file a financial application with the Executive Secretary within 60 days after the Executive Secretary mails written notice of approval of the applicant's loan eligibility application. The completed application with supporting documents shall contain all information required by the financial application. If the financial application is not received by the Executive Secretary within 60 days, the applicant's eligibility application approval shall be forfeited.

(b) All costs incurred in processing the financial application including appraisals, title reports, or UCC-1 releases shall be the responsibility of and paid for by the applicant. The Executive Secretary may require payment of costs in advance. The Executive Secretary shall not reimburse costs which have been expended, even if the loan fails to close, regardless of the reason.

(c) Financial applications shall be reviewed in the order in which they are received. The approval of the financial application shall be based on information provided by the applicant, and:

(1) review of any and all records and documents on file;

(2) verification of any and all information provided by the applicant;

(3) review of credit worthiness and security pledged; and

(4) review of a site construction work plan.

(d) The Executive Secretary shall notify the applicant in writing of the status of the application when the review is complete.

(e) The applicant must close the loan within 30 days after the Executive Secretary mails the loan documents for the applicant's signature. If the applicant fails to close the loan within this time period, the approval is forfeited and the applicant must ~~[wait until the next application period]~~re-apply. Any subsequent application must start with an eligibility application. An exception to the 30 day period may be granted by the Executive Secretary if the closing is delayed due to circumstances beyond the applicant's control.

R311-212-6. Security for Loans.

(a) The loan applicant must pledge for security personal or real property which meets or exceeds the following criteria:

(1) The loan amount may not be greater than 80 percent of the value of the applicant's equity in the security for cases where the Department obtains a first mortgage position.

(2) The loan amount may not be greater than 60 percent of the value of the applicant's equity in the security for cases where the Department obtains a second mortgage position.

(3) A current written appraisal on the property to be used as security must be submitted to the Executive Secretary. All appraisals must be performed by State of Utah certified appraisers.

(4) Personal property, unless the personal property security interest accompanies a real property security interest, shall be used as security only on loans of less than \$15,000 and for a loan period of a maximum of 5 years. Personal properties shall be lien-free.

(b) A title report on all real property and a UCC-1 clearance on all personal property used as security shall be submitted to the Executive Secretary by a title company or appropriate professional person approved by the Executive Secretary.

(c) When the title report indicates an existing lien or encumbrance on real property to be used as security, the existing lien holders may subordinate their interest in favor of the Department. The Department shall accept no less than a second mortgage position on real property pledged for loan security.

(d) Whenever a corporation seeks a loan, its principals must guarantee the loan personally.

(e) The applicant must provide a complete financial statement with cash flow projections for debt service.

(f) Above ground storage tanks and real property on which they are located shall not be acceptable as security.

(g) Underground storage tanks and the real property on which they are located shall not be acceptable as security unless:

(1) The UST facility offered for security has not had a petroleum release which has not been properly remediated; and

(2) The applicant provides documentation to demonstrate the UST facility is currently in compliance with the loan eligibility requirements set forth in R311-212-3.

R311-212-7. Procedure for Making Loans.

(a) Loan funds shall be obligated after all documents to secure a loan are complete, processed, and appropriately signed by the applicant and the Executive Secretary.

(b) Loan proceeds shall be disbursed to the applicant after closing documents are processed, work at the site is completed, and all paperwork and notifications have been received by the Executive Secretary. The loan proceeds may be disbursed jointly to the applicant and the contractor who completed the work. If the loan amount exceeds the allowable project costs, the Executive Secretary may credit any difference to the applicant's account rather than disbursing excess proceeds to the applicant.

(c) Loan proceeds shall not be used to pay underground storage tank registration fees, penalties, or interest assessed under Section 19-6-408 or petroleum storage tank fees, penalties, or interest assessed under Section 19-6-411.

(d) Loans shall not be made for work which is performed before the applicant's eligibility and financial applications are approved and the loan is closed.

R311-212-8. Servicing the Loans.

(a) The Executive Secretary shall establish a loan repayment schedule for each borrower based on the financial situation and income circumstances of the borrower and within the term of loans allowed by Subsection 19-6-405.3(6)(e). Loans shall be amortized with equal payment amounts and payments shall be of such amount to pay all interest and principal in full.

(b) The initial installment payment is due on a date established by the Executive Secretary. Subsequent installment payments are due on the first day of each month. A notice of payment and due date shall be sent for each subsequent payment. Non-receipt of the statement of account or notice of payment shall not be a defense for non-payment or late payment.

(c) The Executive Secretary shall apply loan payments received first to penalty, next to interest and then to principal.

(d) Loan payments may be made in advance or the remaining principal balance of the loan may be paid in full at any time without penalty.

(e) Notices of late payment penalty assessed with amounts of penalty and the total payment due shall be sent to the borrower.

(f) The penalty for late loan payments shall be 10 percent of the payment due. The penalty shall be assessed and payable on payments received by the Executive Secretary more than five days after the due date. A penalty shall be assessed only once on a given late payment. Payments shall be considered received the day of the U.S. Postal Service post mark date or receipted date for payments delivered to the Executive Secretary by methods other than the U.S. Postal Service. If a loan payment check is returned due to insufficient funds, a service charge of twenty dollars shall be added to the payment amount due.

R311-212-8(f). Add a reference to the service charge assessed for loan payment checks that are returned due to insufficient funds.

(g) Notice of loans paid in full shall be sent after all penalties, interest and principal have been paid.

(h) Releases of the Executive Secretary's interest in security shall be prepared and sent to the borrower or filed for public notice as applicable.

R311-212-9. Recovering on Defaulted Loans.

(a) Loans may be considered in default when two consecutive payments are past due by 30 days or more, when the applicant's ability to receive payments for claims against the fund lapses, or if the certificate of compliance lapses or is revoked. Lapsing under section R311-206-7(e) shall not be considered as grounds for default for USTs which are permanently closed.

(b) The Executive Secretary may declare the full amount of the defaulted loan, penalty, and interest immediately due.

(c) The Executive Secretary need not give notice of default prior to declaring the full amount due and payable.

(d) The borrower shall be liable for attorney's fees and collection costs for defaulted loans whether incurred before or after court action.

R311-212-10. Forms.

(a) The forms dated and listed below, on file with the Department, are incorporated by reference as part of Section R311-212, and shall be used by the Executive Secretary for making loans.

(1) Loan Eligibility Application version 12/08/94

(2) Financial Application version 06/15/95

(3) Balance Sheet version 06/15/95

- (4) Loan Commitment Agreement version 06/15/95
- (5) Corporate Authorization version 06/15/95
- (6) Promissory Note version 06/15/95
- (7) Extension and Modification Agreement version 06/15/95
- (8) Security Agreement version 06/15/95
- (9) Hypothecation Agreement 06/15/95
- (10) General Pledge Agreement 06/15/95
- (11) Assignment 06/15/95
- (12) Assignment of Account 06/15/95
- (13) Trust Deed
- (i) property with underground storage tanks version 06/15/95; or
- (ii) property without underground storage tanks version 06/15/95.

(b) The Executive Secretary may require or allow the use of other forms that are consistent with these rules as necessary for the loan approval process. The Executive Secretary may change these forms for administrative purposes provided the revised forms remain consistent with the substantive provisions of the adopted forms.

R311-212-11. Rules in Effect.

(a) The rules in effect on the closing date of the loan and the forms signed by the parties shall govern the parties.

KEY: hazardous substances, petroleum, underground storage tanks

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19-6-405.3